

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JORGE LINARES,

Plaintiff,

**9:05-CV-625
(GLS/RFT)**

v.

**DAVID MAHUNIK, JOHN BURGE, and
KENNETH McLAUGHLIN,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

JORGE LINARES
Plaintiff, *Pro Se*
96-A-3483
Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953

FOR THE DEFENDANTS:

HON. ELIOT J. SPITZER
New York Attorney General
The Capitol
Albany, New York 12224

MARIA MORAN
Assistant Attorney General

**Gary L. Sharpe
U.S. District Judge**

ORDER

The above-captioned matter comes before this court following a Report-Recommendation issued by Magistrate Judge Randolph F. Treece on August 10, 2006. Despite the passage of ten days, no objections have been filed. Having reviewed the Report-Recommendation for clear error, *see Almonte v. N.Y. State Div. of Parole*, 9:04-CV-484, 2006 WL 149049 (N.D.N.Y. Jan. 18, 2006), and finding none, the court adopts Judge Treece's Report-Recommendation in its entirety.

WHEREFORE, it is hereby

ORDERED, that the Report-Recommendation filed on August 10, 2006 is **ACCEPTED** in its entirety for the reasons stated therein, and it is further

ORDERED, that defendants' motion to dismiss (**Dkt. No. 22**) is **GRANTED IN PART AND DENIED IN PART**, and it is further

ORDERED, that defendants' motion to dismiss based on all the claims against the defendants in their official capacities is **GRANTED**, and it is further

ORDERED, that defendants' motion to dismiss based on plaintiff's

First Amendment free exercise of religion claim is **GRANTED**, and it is further

ORDERED, that defendants' motion to dismiss based on plaintiff's First Amendment access to the law library claim is **GRANTED**, and it is further

ORDERED, that defendants' motion to dismiss based on plaintiff's First Amendment retaliation claim against Defendant Mahunik is **DENIED**, and it is further


ORDERED, that defendants' motion to dismiss based on plaintiff's supervisory liability claim for retaliation against Defendant Burge is **DENIED**, and it is further

ORDERED, that defendants' motion to dismiss based on plaintiff's failure to investigate claim against Defendant McLaughlin is **GRANTED**, and it is further

ORDERED, that defendants Mahunik and Burge submit answers to the Amended Complaint within twenty (20) days of the filing of this order, and it is further

ORDERED, that the Clerk of the Court provide a copy of this Order to the parties by regular mail.

September 11, 2006
Albany, New York


United States District Court Judge